(2)

Supreme Court, U.S.
FILED
APR 2 9 2005
OFFICE OF THE CLERK

No. 04-1037

In The

Supreme Court of the United States

Rickie Allen Wilson

Petitioner

v.

State of Colorado

Respondent

On Petition For Writ Of Certiorari
To The Supreme Court of Colorado

PETITION FOR REHEARING

Rickie Allen Wilson
33735 Isham Jones Rd.
Pine, Colorado 80470
303-838-7669

INTRODUCTION

Rickie Allen Wilson, hereinafter "petitioner", moves this court to grant a Petition for Rehearing.

Wilson's petition is made timely, in good faith, not in bad faith, for good cause and not intended for delay.

Wilson is unschooled in law and therefore requests this Court to look to the Substance of this writing, rather than to its Form. **Haines v. Kerner**, 404 U.S. 519.

This petition is made pursuant to Supreme Court Rule 44(2).

TABLE OF CONTENTS

Introduction..... **Error! Bookmark not defined.**

Table Of Contents i

Table Of Authorities i

Substantial Grounds Not Previously Presented 1

Reasons For Granting The Petition..... 2

Conclusion 3

Rule 44(2) Certification

TABLE OF AUTHORITIES

FEDERAL CASES: **PAGE**

Spies v. United States, 317 U.S. 492 (1943) 1

SUBSTANTIAL GROUNDS

NOT PREVIOUSLY PRESENTED

1. Additional requirements for conviction of "tax evasion" were recently discovered by petitioner. Cites from **Spies v. United States**, 317 U.S. 492 (1943) demonstrate that a "positive/affirmative act" is an element necessary to the determination of whether the crime of "evasion" has taken place:

> "we would think **affirmative willful attempt may be inferred from conduct such as keeping a double set of books, making false entries of alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the kind, and any conduct, the likely effect of which would be to mislead or to conceal.**"
>
> "If on proper submission the jury found these acts, taken together with willful failure to file a return and willful failure to pay the tax, to constitute a willful attempt to defeat and evade tax, we would consider conviction of a felony sustainable. But **we think a defendant is entitled to a charge which will point out the necessity for such an inference**

> **of willful attempt to defeat or evade tax from some proof in the case other than that necessary to make out the misdemeanors; and if the evidence fails to afford such an inference, the defendant should be acquitted."** [emphasis added]

2. The requirement that a "positive/affirmative act" and not merely an omission or failure to act, be committed, goes to the heart of the lack of proper jury instructions by the trial court. Petitioner has already presented the failings of the trial court's jury instructions relative to the "willfulness" factor. The lack of instructions relative to the required "positive/affirmative act" is another reversible error committed by the trial court.

3. The lack of this requirement as an element of the crime which the prosecution is required to prove, renders the statute unconstitutional as already presented by petitioner.

REASONS FOR GRANTING THE PETITION

It occurs to petitioner that without recourse to this court for enforcement of its decisions at all levels subordinate to this court, there is no remedy available

when decisions of this court are contravened by decisions of lower courts. If this is the case, then there is no reason for this court to exist and hand down "decisions" and/or "opinions" as they have no legal effect and afford the Citizen no protections.

To assure the protections of law and due process, which this court has attempted to provide, it is necessary for this court to intervene, and set to rights, such trespasses as have occurred in the proceedings of this case prior to its arrival at the foot of this bench.

CONCLUSION

The Petition for Rehearing should be granted.

Respectfully submitted,
Rickie Allen Wilson
April 2005

Rule 44(2) Certification

I certify pursuant to Rule 44(2) that the grounds for this Petition for Rehearing are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented and that it is presented in good faith and not for delay.

_____

Rickie Allen Wilson